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INSTRUCTIONS
FOR
COURTS-MARTIAL
AND
JUDGE ADVOCATES.

PREPARED BY
Major THOMAS F. BARR,
Judge Advocate, U. S. A.

...

SAINT PAUL, MINN.:
HEADQUARTERS DEPARTMENT OF DAKOTA,
DECEMBER 15, 1879.

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HEADQUARTERS DEPARTMENT OF DAKOTA,

Saint Paul, Minn., December 15, 1879.

CIRCULAR:

The following formulas for the record of proceedings of General Courts-Martial, and of Garrison Courts, and Instructions for Courts and Judge Advocates, are published for the information and guidance of officers serving in this Department:

Page 1.

CASE 1.

Proceedings of a General Court-Martial which convened at.....
.....pursuant to the following order:

HEADQUARTERS DEPARTMENT OF DAKOTA,

.....18...

SPECIAL ORDERS }
No. }

A General Court-Martial is hereby appointed to convene at Fort Snelling, Minn., on.....the.....of.....
at 10 o'clock A. M., or as soon thereafter as practicable, for the trial of such persons as may be brought before it by authority from these Headquarters.

DETAIL FOR THE COURT.

1. Colonel.....U. S. Infantry,
2. Major.....U. S. Cavalry,
3. Major.....U. S. Cavalry,
4. Captain.....U. S. Infantry,
5. Captain.....U. S. Cavalry,
6. Captain.....U. S. Infantry,
7. Assistant Surgeon.....U. S. Army,
8. First Lieutenant.....U. S. Infantry,
- First Lieutenant.....U. S. Cavalry,
is appointed Judge Advocate of the Court.

No other officers than those named can be assembled without manifest injury to the service.

BY ORDER OF BRIGADIER GENERAL TERRY:

Commanding the Department.

GEO. D. RUGGLES,

Assistant Adjutant General.

FORT SNELLING, MINN.

18.

The Court met, pursuant to the foregoing order, at 10 o'clock A.M.

PRESENT:

1. Colonel U. S. Infantry,
2. Major..... U. S. Cavalry,
3. Major..... U. S. Cavalry,
4. Captain..... U. S. Infantry,
5. Captain..... U. S. Cavalry,
6. Captain..... U. S. Infantry,
7. Assistant Surgeon..... U. S. Army,
- First Lieutenant..... U. S. Cavalry,
- Judge Advocate.

ABSENT:

1. First Lieutenant..... U. S. Infantry.

(Here set forth the cause of absence of any absent member, if the same is known. It is the duty of a Judge Advocate to ascertain if possible, the cause of absence and record it, and in cases of sickness, medical certificates must be furnished by the absent members, and appended to the record.)

The Court then proceeded to the trial of Regiment, U. S. Infantry, who thereupon came before the Court, and having heard the order appointing it read, was asked if he had any objection to any member present, named in the order; to which he replied in the negative, (or) the accused submitted the following objection to.....

(Here insert the objection.)

The challenged member stated that :

(Here insert the statement of the challenged member, who should always be required to respond to the challenge and inform the Court upon its merits.)

The Court was thereupon closed, the challenged member and the accused retiring, and, after due deliberation, the Court having reopened, the challenged member and the accused resumed their seats; when the decision of the Court was announced by the Judge Advocate, that the objection of the accused is sustained, and *(here insert challenged member's name and rank,)* is therefore excused from serving as a member of the Court in this case; *(or)* that the objection of the accused is over-ruled.

(Objection can only be urged to one member at a time, and a record as above must be made in each instance. If the person on trial has no further objection to offer, the record will continue as follows :)

The accused having no further objection to offer, the members of the Court were then severally duly sworn by the Judge Advocate, and the Judge Advocate was then duly sworn by the President of the Court; all of which oaths were administered in the presence of the accused.

(For form of oaths see 84th and 85th Articles of War.)

If a clerk is introduced, the following form of oath will be administered to him by the Judge Advocate : *

You, A.— B.—, do swear that you will faithfully perform the duties of a clerk of this Court, and make true record of the proceedings had in the cause now on trial, so help you God.

The record will state as follows :

The Judge Advocate here requested authority to employ a citizen clerk (or permission to introduce an enlisted man as Clerk of the Court,) which was granted, and A. B. was thereupon duly sworn by the Judge Advocate to faithfully perform the duties of his office; which oath was administered in presence of the accused.

Should the person on trial desire to introduce counsel, he should now make application, and the record will continue as follows :

*NOTE —A citizen clerk can only be employed by the Judge Advocate by order of the Court, when it is not practicable to procure the services of an enlisted man; such employment should only be authorized in cases of importance, and when an extended record is probable.

The accused now requested permission of the Court to introduce
, as his counsel, which request was granted.

(If any delay in the trial is desired, application should now be made, and in passing upon the request, the Court should be governed by paragraphs 886 and 887, Revised Army Regulations of 1863.)

The accused was then duly arraigned upon the following charge and specification:

CHARGE.

.....

Specification.—.....

To which the accused pleaded as follows:

To the Specification, "Guilty," (or) "Not Guilty."

To the Charge, "Guilty," (or) "Not Guilty."

(Or the accused may, in lieu of pleading to the merits, put in a special plea in bar of trial, to the jurisdiction, or autrefois convict, or other recognized plea. If he stands mute the plea of not guilty should be entered on the record with a statement of his refusal to plead.)

Captain..... of the..... U. S. Infantry, a witness for the prosecution, was then duly sworn by the Judge Advocate, and testified as follows:

(For form of oath see 92d Article of War.)

Question, by the Judge Advocate:

* *

Answer: * * * *

* * * *

CROSS-EXAMINATION.

Question, by accused: * *

Answer: * * *

(If the accused declines to cross-examine the witness, it should so appear on the record. If new matter has been elicited in the cross-examination, bearing upon the issue of the trial, the Judge Advocate will re-examine the witness, should the facts require it.)

(After the examination-in-chief, the cross-examination and re-examination, the Court can ask such questions as it may deem necessary. A question by a member of the Court, if objected to and rejected, must be recorded as "by a member." If not objected to the record will continue as follows:)

Question, by the Court : * * *

Answer : * * * *

* * * * *

*(After all the testimony for the prosecution has been adduced, the record will continue as follows. The testimony of the witness was then read to him by the Judge Advocate, (or the clerk), and pronounced by him correctly recorded : **

The Judge advocate then announced that the prosecution rested,

The Court then at . . . o'clock P. M., adjourned to meet to-morrow at 10 o'clock A. M.

.....

1st Lieutenant . . . U. S. Cavalry,
Judge Advocate.

SECOND DAY.

FORT SNELLING, MINN.,

.....18 ...

The Court met, pursuant to adjournment, at 10 o'clock A. M.

PRESENT :

(Here give names, rank, &c., of members present and of Judge Advocate.)

ABSENT :

(Names, rank, and cause of absence.)

The accused and . . . his counsel, (and clerk of Court,) also present.

The proceedings of the . . . instant were then read and approved.

Sergeant . . . of the . . . U. S. Infantry, a witness for the defence, was then duly sworn and testified as follows :

Question, by the accused : * * *

Answer : * * * *

* * * * *

CROSS-EXAMINATION.

Question, by Judge Advocate : * * *

*NOTE.—This course should be pursued and record made at the close of the examination of each witness.

Answer:

*

*

*

*

*

Question, by the Court:

Answer:

*

*

*

*

*

The accused having no further testimony to offer, made the following statement in his defence, (or) submitted a written statement in his defence, which was read to the Court by the accused, (or by the Judge Advocate,) and is hereto annexed marked "A."*

The Judge Advocate replied as follows:

(Here insert the remarks of the Judge Advocate if verbal; if written, they should be read and annexed as in the case of the defence,) (or) the Judge Advocate submitted the case without remark.

The Court was then cleared and closed for deliberation, and having maturely considered the evidence adduced, finds the accused...

..... U. S. Infantry:

Of the Specification, "Guilty," (or) "Not Guilty."

Of the Charge, "Guilty," (or) "Not Guilty."

And the Court does therefore sentence him,..... of
..... Regiment U. S. Infantry, to.....

(or) And the Court does therefore acquit him,..... of
..... Regiment U. S. Infantry.

Colonel..... U. S. Infantry,
President.

1st Lieutenant..... U. S. Cavalry,

Judge Advocate.

(The following will be added to the record of the last case brought before the Court.)

*NOTE.—The statement of the accused, when in writing or argument in his defence, and all pleas in bar of trial or abatement, should be signed by himself and appended to the record, and referred to in the proceedings as having been submitted by him, whether he is defended by counsel or not.

There being no further business before it, the Court then, at
o'clock M., adjourned *sine die*.

Colonel U. S. Infantry,

President.

1st Lieutenant U. S. Cavalry,

Judge Advocate.

(A space of at least two pages should be left at the close of each record, for the decision and orders of the reviewing authority. All Exhibits and the recommendation of the Court, if any is made, should be appended after the space left for recording the action of the reviewing authority.)

The proceedings should be recorded on Legal Cap. paper, each record folded in four folds, and endorsed on the first fold as follows:

FORT SNELLING, MINN.,

18

Proceedings of a General Court-Martial,
appointed by Special Orders No. . . . ,
dated Headquarters Department
of Dakota 18

Colonel U. S. Infantry,

President.

1st Lieutenant U. S. Cavalry,

Judge Advocate.

CASE THIRD.

Private

Infantry.

When a record is returned to the Court by the reviewing authority for revision, the subsequent proceedings thereon should be recorded as follows:

REVISION.
FORT SNELLING, MINN.,

.....18...

The Court re-convened with closed doors, pursuant to the following order, (or instructions,) at 10 o'clock A. M.:

(Here insert copy of order, or instructions.)

PRESENT.

* * * *

ABSENT.

* * * *

The communication from the Adjutant General, Department of Dakota, of date.....18...., (or memorandum containing the instructions to the Court, and the reasons of the reviewing authority for requiring a re-consideration of the findings, or sentence, or correction of the record,) was then read to the Court by the Judge Advocate, and is attached to the record and marked, "....."

The Court having carefully considered the whole of the proceedings and the reasons set forth for revision:

a. Do now revoke their former findings, and find, &c., &c.

or,

b. Do now revoke their former sentence, and do sentence, &c., &c.

or,

c. Do now respectfully adhere to their former findings and sentence.

or,

d. Do now amend the record by, &c., &c.

.....

Colonel..... U. S. Infantry,
President.

.....

1st Lieutenant..... U. S. Cavalry,
Judge Advocate.

GARRISON COURTS-MARTIAL.

FIRST DAY.

Proceedings of a Garrison Court-Martial held at Fort Ellis, M. T., pursuant to the following order:

HEADQUARTERS FORT ELLIS, M. T.,

.....18

POST ORDERS {
No..... }

A Garrison Court-Martial will convene at this Post on the.....
.....18...., at 10 o'clock A. M., or as soon thereafter
as practicable, for the trial of such prisoners as may properly be
brought before it.

DETAIL FOR THE COURT.

1. First Lieutenant A. B., 2d Cavalry.
2. First Lieutenant C. D., 2d Cavalry.
3. Second Lieutenant E. F., 2d Cavalry.

Second Lieutenant G. H., 2d Cavalry, is appointed

Judge Advocate.*

BY ORDER OF.....

(Signed).....

1st LieutenantInfantry,

Post Adjutant.

FORT ELLIS, M. T.,

.....18

The Court met, pursuant to the foregoing order, at...o'clock A.M.

PRESENT:

First Lieutenant A. B., 2d Cavalry.

First Lieutenant C. D., 2d Cavalry.

Second Lieutenant E. F., 2d Cavalry.

Second Lieutenant G. H., 2d Cavalry, Judge Advocate.

The Court then proceeded to the trial of Private.....
Company.....Regiment U. S. Infantry, who was then brought
before the Court, and having heard the order convening it read, was
asked if he had any objection to being tried by any member named
therein; to which he replied in the negative. The members of the
Court were then severally duly sworn by the Judge Advocate, and
the Judge Advocate was then duly sworn by the President of the
Court, all of which oaths were administered in the presence of the
accused.

*The new 74th Article of War gives authority to appoint a Judge Advocate for
Garrison and Regimental Courts.

(The record will be made up in the same general manner as indicated for the proceedings of General Courts.)

The decision and orders of the Reviewing Officer, confirming, disapproving, or remitting the sentence, should follow immediately after the signatures of the President and Judge Advocate, and be signed by him and then forwarded, without delay, together with a copy of his Post or Regimental Order promulgating the proceedings, to Department Headquarters, for the supervision of the Department Commander. *(See paragraph 898 Army Regulations.)*

GENERAL INSTRUCTIONS.

CHARGES AND SPECIFICATIONS.

In preferring charges, care should be used to specify the date and locality of the alleged offence. When doubt exists, it may be alleged that the act specified was committed "at or near" a certain place and "on or about" a certain date. Before charges are forwarded to Department Headquarters for trial by a General Court, Post Commanders should investigate the character and force of the testimony on which they are based, and be assured that the alleged facts can be fully established; and also, *that the offences charged are of so grave a nature that a Garrison Court cannot adjudge a sufficient penalty.*

Charges should be laid under the specific article of war pertaining to the offence.

Charges cannot be legally preferred under the 62d Article of War when the offence committed is in violation of any other article.

In an absence from any appointed parade, drill, or other exercise, but not from the limits of the post, the specification should usually be charged under the 33d Article of War—but otherwise under the 32d, and sometimes under both. Soldiers found drunk on any guard, party, or other duty, after having been actually placed on such duty, and in the ranks, and not until then discovered to be drunk, should be charged with violation of the 38th Article of War—but otherwise, under the 62d Article, as when unable to turn out for, or attend, guard-mounting.

Charges laid under Articles of War which prescribe possible capital punishment, such as the 21st or 39th Articles, are not properly cognizable by a Garrison or Regimental Court, nor should degrading

crimes—like theft, to the prejudice of good order, &c.—be tried before such tribunals. In preparing several specifications under a charge, the date and place of the alleged offence should be set forth in each, and not merely in the final specification.

A charge of "Violation of the 62d Article of War," is bad. Any of the "crimes, disorders and neglects, not mentioned in other articles," should be charged as "Conduct to the prejudice of good order and military discipline,"

ARRAIGNMENT.

The following is the form of arraignment: The accused standing, the charge and specifications, should be read to him by the Judge Advocate, who then should say:

"You have heard the charge and specifications preferred against you.

What say you to the (1st) specification—guilty, or not guilty?

What say you to the charge—guilty or not guilty?"

The pleading should be to the specifications in their order, and lastly to the charge. (*See 89th Article of War.*)

EVIDENCE.

When the accused has entered a plea in bar of trial, the Court should, if the plea is *prima facie* tenable, receive evidence of the facts therein stated, and if the plea be found valid, should postpone further consideration of the case and report its decision to the convening authority.

When the accused has plead guilty, and, with no evidence taken, has made a statement to the Court inconsistent with his plea, the statement and plea should be considered together, and if guilt is not conclusively admitted, the Court should direct the entry of a plea of not guilty and proceed with the trial on its merits.

In all cases subject to a discretionary punishment, a full knowledge of the circumstances attending the offense is essential for the information of the reviewing authority, and to an enlightened exercise of the discretion of the Court in measuring the punishment—except where the specification is so descriptive, as to disclose all the circumstances of mitigation or aggravation which accompanied the offense.

When the Court takes evidence after a plea of "guilty," the accused may cross-examine the witnesses, and he may produce

evidence to rebut their testimony, and evidence as to character, and may address the Court in extenuation of the offense or in mitigation of punishment.

The best attainable evidence should always be adduced, and should be confined to the allegations at issue.

Hearsay testimony is inadmissible; as also are *opinions* of witnesses, except upon questions where witnesses are called to testify as *experts*, and the fact that they are such, clearly shown.

In allegations of drunkenness, witnesses, in other respects competent, can give their opinion and belief as to the state of sobriety of the accused at the times specified.

Documentary evidence is only admissible when its authenticity has been established by sworn testimony, or under the seal of a court of record.

When original documents are introduced, and are of such a character that the originals cannot be retained, copies, certified as correct by the Judge Advocate, may be attached to the record.

When transcripts from the records of any of the Executive Departments of the Government are used, they should be certified to by the chief officer of the bureau in which the originals are filed, and the authenticity of the certification verified under the seal of the Department, by the Secretary thereof.

The entry on the descriptive list of a soldier, that he has deserted, is not proof of the offense, but merely evidence that he has been charged with its commission.

Courts-Martial are governed by the Common Law Rules of Evidence, except where such rules have been modified by Acts of Congress.

As members of Courts-Martial cannot, however, be expected to be familiar with all the rules governing the admission of testimony, it is at all times advisable to permit the accused party the utmost latitude in submitting his defence, though not, of course, to the extent of permitting hearsay testimony to be introduced. (*See General Court-Martial Orders No. 32, War Department, October 31, 1872.*)

EXAMINATION OF WITNESSES.

After a witness has been sworn, the first question should be as to his own name and rank, and the second so framed as to elicit an answer embracing the recognition of the accused, including rank, company, regiment, &c. The third in such form that the answer

may show that the witness has been so placed as to have knowledge of the circumstances set forth in the pleadings. The fourth and subsequent interrogatories to be framed so as to elicit all the facts material to the matter at issue. Care should be taken in the direct examination to prove, as nearly as possible, the averments of time and place laid down in the specifications.

Leading questions, or such as, from their construction, plainly suggest to the witness the desired answer, are not admissible in an examination-in-chief.

This rule, however, admits of exceptions. As, for instance, when a witness appears to be hostile to the party who produces him; when he is unwilling to give his testimony, or where, from the situation of the witness as regards the case, his interest is adverse to the party calling him. In all these cases leading questions may be put in the direct examination. Leading questions may be addressed to a witness in cross examination in all cases, with a single exception. When a witness undergoing cross-examination, manifests unmistakable hostility to the party who produces him, or bias in favor of the party cross-examining him, the Court may prohibit leading questions.

In the trial of a case, the Court should usually defer questioning a witness until after his examination by the Judge Advocate and the accused, has been completed. Such questions should be for the purpose of clearing doubts in the minds of members, or of reconciling discrepancies.

The cross-examination should be confined to testimony elicited in the examination-in-chief, and not run into a general defense involving new matter. When facts are to be elicited from witnesses for the prosecution, advantageous to the accused, such witnesses can be recalled by the defense for that purpose.

Re-examination is only for the purpose of explaining any new facts that may come out in the cross-examination, and should, as a general rule, be confined to this.

Witnesses may be recalled by the Court at any stage in the proceedings, for such examination as may be deemed necessary, in which case both parties must be present. The Court may also call before it, witnesses not summoned by either the prosecution or defense.

After a witness has given his evidence in full, it should be read over to him, that he may see whether it has been recorded as he gave it, and that he may make corrections, if necessary.

If a witness desires to make corrections after hearing his testimony read, his statement in explanation should be recorded—changes in the testimony as originally given should not be permitted—as thereby the benefit derived from cross-examination might be lost.

FINDINGS.

When the proof adduced sustains the pleadings in a partial form only, the Court should acquit of the unproven portion in express terms; and where the alleged date and place of offence is found to be erroneous, the proper corrections should be made in the findings.

A Court cannot in its finding, legally substitute a finding under the 62d Article of War for any other—when the specification and testimony sustain the particular article under which the specification is laid.

It is only when the proof under the specification does not sustain the charge, that the Court may, in its discretion, substitute the charge of “Conduct to the prejudice of good order and military discipline.”

SENTENCE.

The following numbered Articles of War are mandatory as to the sentence to be adjudged for their violation; Articles 6, 8, 13, 14, 15, 17, 18, 26, 38, 57, 61, 65, and section 1343, Revised Statutes. Any other than the prescribed sentence would be illegal.

The legal punishment which may be inflicted by sentence of a Court-Martial will be found under paragraph 895, Army Regulations.

In cases of acquittal, and those in which the sentences adjudge forfeiture only, the President of the Court will in writing notify the Commanding Officer of the prisoner, that there is no longer any necessity for keeping the man in confinement. (*See Department General Orders No. 18, October 4, 1878, and paragraph 2, Department General Orders No. 10, August 1, 1879.*)

RECORD.

All orders which have been issued, modifying the detail of a Court, after its original organization, should be included in the record of every case.

The entire proceedings of the Court in each case should be fully set forth in the record. All orders, motions, or rulings of the Court itself—all motions, propositions, objections, arguments, statements, &c., of the Judge Advocate and the accused—the entire testimony

of each witness, given in his own language—and, indeed, every feature of the proceedings material to a complete history of the case, and to a correct understanding of every point of the same by the reviewing authority—should be recorded at length.

The record of proceedings, and the final defense of the accused, should be written upon Legal Cap paper of uniform size.

The proceedings in each completed case should be immediately signed by the President and Judge Advocate.

Recommendations to clemency should not be placed in connection with the sentence, but should be appended to the record.

All documentary evidence submitted to the Court must be attached to the record, lettered in the order of submission, as "A," "B," &c.

The hour at which the Court meets and adjourns each day should be stated in the record, in order that it may be determined by the reviewing authority, whether the Court sat during legal hours, and the record of the close of each day's proceedings authenticated by the signature of the Judge Advocate.

The record should show that the accused had an opportunity offered him to cross-examine the witnesses for the prosecution.

When an interpreter is necessary, the record must show that he was duly sworn, in open Court, to faithfully perform such duties.

If a reporter or clerk is appointed by proper authority, according to existing law and orders, the record must show that he was duly sworn in open Court and in the presence of the accused, faithfully to perform his duty and record the proceedings of, and testimony to be taken, before the Court, in the particular case.

The attention of Courts-Martial is invited, in this connection, to the published decisions of the Judge Advocate General of the Army, under the title of "Court-Martial—Finding—and Record."

In forwarding records of trial to Department Headquarters, Judge Advocates of General Courts-Martial will accompany them with the original charges upon which trial was had. (*See General Orders No. 75, Department of Dakota, Nov. 14, 1872*)

WITNESSES.

To secure the attendance of necessary and material witnesses before a General Court-Martial, the Judge Advocate should usually proceed as follows:

1st. If the witness is an enlisted man, and stationed in the par-

ticular Department, the summons should be addressed to his Post Commander, by whom an order should then be issued for compliance therewith.

2d. If the desired witness is an officer so stationed, the summons should be sent to him through his Post Commander, by whom an order should also be issued to enable him to attend, but in military emergencies, the Post Commander may, in either of these cases, first refer the matter to Department Headquarters.

3d. The testimony of military witnesses without the particular Department should, except in capital cases, be taken by deposition, unless the Judge Advocate is prepared to certify that "under the peculiar circumstances of the case, and to administer justice, it is not practicable to take the desired testimony by deposition under the 91st Article of War." In such case, the summons and application of the Judge Advocate thus certified will be sent through Department Headquarters.

4th. The testimony of citizens residing beyond the limits of the State or Territory where a court is convened, should, except in capital cases, be taken by deposition when practicable, to save expense to the Government.

In order to subpoena a citizen witness, it must be made to appear to the satisfaction of the Court, that his testimony is "material and necessary," and the fact entered on the record.*

Duplicate subpoenas should then be sent to the nearest Post Commander for service, if the witness resides within the Department, or else to Department Headquarters, unless otherwise specially directed by the Department Commander.

Service is made, under the laws of the United States, by delivering the subpoena to the witness, and *proof* of service, by returning the duplicate original to the Judge Advocate, with an affidavit endorsed, to the effect, that on such a day, date, and place, the affiant

*It usually happens that a Judge Advocate receives the "charge and specifications," (which stand in place of an indictment in the Civil Courts.) prior to the assembling of the Court: and that, to prevent delay in the trial, it becomes necessary to summon or subpoena the military or civilian witnesses, whose names are attached.

In such case the subpoena (in duplicate) for the citizen witness may be issued, *pro forma*, as above indicated—without, of necessity, waiting for the Court to assemble; but in the event of the witness not obeying it, the Judge Advocate, upon moving for a writ of attachment, must show to the Court additionally, and have it entered on the record—"that the witness is a material and necessary one."

personally served the within named witness, by delivering to him, a subpoena, of which the within is a complete copy.

Such affidavit can be taken in the manner provided by paragraph 1031, Army Regulations.

Any person, instructed by the Judge Advocate or Post Commander, can serve the subpoena; but service by mail is *not* a legal service.

Should the witness fail to appear on due and reasonable notice, the Judge Advocate has, by the provisions of section 1202, Revised Statutes, power to issue like process, to compel any witness to appear and testify, as the Courts of criminal jurisdiction within the State, Territory or District where such Court may be convened. This power includes also the power to execute such process through some officer, who shall be specially charged with its execution. (12 *Vol. Opinions U. S. Attorneys General*, of 1868, p. 581.)

The Judge Advocate should, therefore, present and have attached to the record, and therein noted, the duplicate subpoena and affidavit of service, and formally move the Court for a writ of attachment against the contumacious witness.

If the motion is granted, the record should show it; and the Judge Advocate should then apply to the Department Commander for the name of some military officer to serve the process, and formally direct the writ of attachment to him, and attach thereto a certified copy of the order convening the Court, and copies also of the original subpoena and charges and specifications. The Post Commander will thereupon furnish the officer a sufficient force for the execution of the process* whenever such force shall be actually required.

*The following forms should be used:

(*Subpœna*)

GENERAL COURT-MARTIAL ROOMS.

(*Station of Court.*).....

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

To:.....

.....GREETING:

Pursuant to the provisions of Section 1202, Revised Statutes of the United States, you are hereby required to be and appear, in your own proper person, on theday of 18...., ato'clock in thenoon, before a General Court-Martial of the United States, convened at said by virtue of Special Orders Number .., of 18...., from the Headquarters of the Department of,to testify and give evidence all that you may know concerning the pending case then and there to be tried, of the United States

If the witness resides without the limits of the Department, the Judge Advocate should transmit the writ of attachment, with its annexed certified copies of orders convening Court, subpoena, and charges, to these Headquarters, properly signed and filled in, except as to the name of the officer who may be subsequently designated to serve the writ.

versus accused of..... under the laws of the United States, and have you then and there this precept.

Witness:(Name of Presiding Officer.)President of said Court, thisday of 18....

(Name)

(Rank).....

(† Insert name and address of witness.)

Judge Advocate.

(Process of Attachment)

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

To.....

.....

Stationed at.

GREETING,

WHEREAS, a General Court-Martial of the United States was duly convened at on the ... day of..... 18...., pursuant to Special Orders No.....of.. 18...., from Headquarters a copy of which said order is hereto annexed marked "A," and WHEREAS, on the....day of..... 18...., at the said General Court-Martial having been first duly sworn of the United States Army, was duly arraigned and his trial proceeded with on a certain charge, instituted at the prosecution of the United States, for the offense of under the laws of the United States, a copy of which is hereto annexed, marked "B," and WHEREAS, one* , of in the..... was, on the....day of..... 18...., personally served with a subpoena (a duplicate of which is hereto annexed, marked "C,") directing him to appear and testify in said cause at the time and place therein commanded; and WHEREAS, the said*..... did, on the... day of 18...., fail and neglect to appear before said Court or testify in said cause, as required by said subpoena, and still fails and neglects to appear or testify in said cause, he being a necessary and material witness therein, and no just excuse has been offered for such neglect:

Now THEREFORE, under and by virtue of the provisions of the 1202d section of the Revised Statutes of the United States, you are hereby commanded that you take the said*..... wherever he may be found within the United States, and him safely keep, and bring you his body without delay before the said General Court-Martial convened at said Fortand of which United States Army, is President, at the Court Room thereof on the....day of....., 18...., at.....o'clock in the forenoon, at the opening of said Court, to then and there testify in the said cause of the United States *ver-*

In executing such process, it is lawful to use only just the necessary amount of force to bring the witness according to its tenor.

If, in executing this legal process, the officer should be served with a writ of *habeas corpus* from any *State Court* (or *State Judge*) for the production of the witness, it will be his duty to endorse and return such writ, respectfully informing the Court (or Judge) that "he holds the within named prisoner pursuant to the writ of attachment, of which a copy, with accompanying orders convening Court, subpoena, and charges, are annexed, and that he is diligently and in good faith engaged in executing said writ of attachment according to its commands. That he respectfully, submits for the inspection of the Court, (or Judge) the original process under which he is acting; but, that as he holds the prisoner under and by color of the authority of the United States, respectfully denies the jurisdiction of the Honorable Court, (or Judge) to proceed further in the premises, but requests the dismissal of the writ of *habeas corpus* for such cause, and invites attention to the decisions of the Supreme Court of the United States on this subject."

(*Vide: Ableman vs. Booth, 21, Howard's U. S. Rep. p. 506,*)

(*Vide: U. S. vs. Tarble, 13 Wallace's U. S. Rep. p. 357,*)

promulgated in General Orders No. 16, War Department, Adjutant General's Office, 1872.)

The officer is *not* required to produce the prisoner before such *State Court*, (or *State Judge*) neither should he permit him to be taken from his custody.

When the writ of *habeas corpus* is issued from a United States Court, or by a United States Judge, it must be implicitly obeyed and

eng....., now depending, and then and there to be continued and tried.

And have you then and there this writ.

BY ORDER OF THE COURT.

IN WITNESS WHEREOF, I, as Judge Advocate of said Court, duly appointed and sworn, have hereunto set my hand and seal, at Fortthis..... day of..... 18....

(Name)

(Rank).....

.....
Seal.....

Judge Advocate.

(*Insert name of contumacious witness.)

the prisoner produced with the orders or process under which he may be held.

5th. Depositions of witnesses cannot be taken nor read in evidence where military offenders are charged with the violation of an Article of War, the penalty for which, may be death.

In time of peace the crime of desertion is *not* a capital one.

In order to ascertain as to the competency of a witness, the opposite party, whether Judge Advocate or accused, is entitled, on request, to examine him upon the subject before he is examined in chief.

This is termed an examination on the *voir dire*; but if the incompetency appear at any period during the trial, the Court will give the opposite party the benefit of it, by ruling, on motion, not to consider the testimony of the witness.

His competency, when thus impeached on the *voir dire*, may however be restored by cross examination, by the party calling him, or by introducing other evidence thereto.

All this must become matter of record.

The following oath should be used on the *voir dire*:

"You do solemnly swear that you will true answers make to such questions as may be here put to you, touching your competency to serve as a witness, in this cause. So help you God."

"The duties devolved upon officers appointed to sit as members of Courts-Martial, are of the most grave and important character, and that these duties may be discharged with justice and propriety, it is incumbent on all officers to apply themselves diligently to the acquirement of a competent knowledge of Military Law, and to make themselves perfectly acquainted with all orders and regulations, and with the practice of Military Courts." (*Order No. 23, A. G. O., May 8, 1830.*)

FORMS OF PLEADINGS IN CASES OF ENLISTED MEN.

Charge and Specification Preferred against Private A.—B.—, Company....,Regiment U. S. Cavalry.

CHARGE.—"Violation of the 16th Article of War."

Specification.—"In that he, Private A.—B.—, Company....,Regiment U. S. Cavalry, did sell a certain quantity of ammu-

nition delivered out to him for use, valued at.....
 This at.....on or about the.....day of
18....."

(Or the specification should allege that the accused "did willfully waste," or "did through neglect waste," &c., as the facts in the case may be. It should not be alleged in a specification, that the accused did sell, *or* willfully, *or* through neglect waste, &c. This remark applies to specifications laid under all Articles of War, which describe several distinct offences.)

CHARGE.—“ Violation of the 17th Article of War.”

Specification.—"In that he, Private A.—B.—, Company . . . , . . . Regiment U. S. Cavalry, did, through neglect, lose the government horse which had been entrusted to his care;

 $or,$

did, through neglect, spoil the government horse, &c.;

or,

did, through neglect, lose the clothing (or arms, or accoutrements) which had been issued to him. This at.....
on or about the.....day of.....18....”

CHARGE.—“ Violation of the 21st Article of War.”

Specification.—"In that he, Private A.—B.—, Company...., ... Regiment U. S. Cavalry, did, with his fist, strike his superior officer, Lieutenant C.—D.—, ... Regiment U. S. Cavalry, the said Lieutenant C.—D.— being at the time in the execution of his office ;

or,

did draw a revolver and threaten to shoot, etc.;

or,

did lift up a sword (or musket, or club) and threaten to strike, etc.;

or,

having been commanded by his superior officer, Lieutenant *C.—D.—*, Regiment U. S. Cavalry, in the execution of his office, to.....did disobey said order. This at....., on or about the....day of18....”

CHARGE.—“ Violation of the 22d Article of War.”

Specification.—"In that he, Private A.—B.—, Company . . . , . . . Regiment U. S. Cavalry, did begin (or excite, or cause) a mutiny against lawful military authority, by (*here set forth the acts of the accused*);

or,

did join with Privates E.—F.—, G.—H.— and J.—K.—, all of Company . . . , . . . Regiment U. S. Cavalry, in a mutiny against lawful military authority, and did, (*here set forth the acts of the accused*). This at on or about the day of 18. . . . "

CHARGE—"Violation of the 32d Article of War."

Specification.—"In that he, Private A.—B.—, Company . . . , . . . Regiment U. S. Cavalry, did absent himself from his detachment, without leave from his Commanding Officer, from , until This at , on or about the day of , 18. . . . "

CHARGE—"Violation of the 33d Article of War."

Specification.—"In that he, Private A.—B.—, Company , . . . Regiment U. S. Cavalry, did fail to repair to the place appointed by his Commanding Officer for dress parade, (or other rendezvous,) not having been prevented by sickness or other necessity, nor excused by proper authority. This at on or about the day of , 18. . . . "

CHARGE—"Violation of the 38th Article of War."

Specification.—"In that he, Private A.—B.—, Company , . . . Regiment U. S. Cavalry, having been regularly mounted, and on duty as a member of the post guard, was found drunk, *or,* being on duty with a detachment escorting Major , a Paymaster in the U. S. Army, was found drunk. This at , on or about the day of 18. . . . "

CHARGE—"Violation of the 39th Article of War."

Specification.—"In this, that he, Private A.—B.—, Company ,

.....Regiment U. S. Infantry, having been regularly posted as a sentinel on post No....., was found asleep on his post,

or,

did leave his post without having been regularly relieved. This at....., on or about theday of.....
....., 18.....”

CHARGE.—“ Violation of the 40th Article of War.”

Specification.—“ In that he, Private A.—B.—, Company...., Regiment U. S. Infantry, having been regularly mounted as a member of the post guard, did quit his guard without leave from his superior officer, and without urgent necessity,

or,

did quit his platoon or division. This at....., on or about the.....day of....., 18.....”

CHARGE.—“ Desertion.”

Specification.—“ In that he, Private A — B.—, Company...., Regiment U. S. Infantry, having been duly enlisted as a soldier in the service of the United States, at.....on theday of.....18...., did desert said service, on or about the.....day of.....18...., at or near....., and did remain absent in desertion until he was apprehended (or “surrendered himself”) at.....on the.....day of.....18....”

CHARGE.—“ Violation of the 60th Article of War.”

Specification.—“ In this, that he, Private A.—B.—, Company....., Regiment U. S. Cavalry, did steal one horse, of the value of....., the property of the United States, and furnished for use in the military service thereof. This at , on or about the.....day of18....”

or,

In this, that he, Private A.—B.—, Company....., Regiment U. S. Cavalry, did steal the following described property of the United States, furnished for use in the military service thereof. (*Here set forth an itemized description of the*

*property alleged to be stolen.) This at....., on or
about the.....day of.....18...."*

CHARGE.—"Conduct to the prejudice of good order and military discipline."

Specification.—"In that he, Private A.— B.—, Company.,
Regiment U. S. Cavalry, having been ordered by his superior
non-commissioned officer,....., the
said non-commissioned officer being at the time in the execu-
tion of his office, to....., did
willfully disobey said order. This at.....on or
about the.....day of.....18...."

(ARTICLE 62.—All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by a general, or a regimental, garrison or field officers' court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.)

The foregoing forms, applicable to a majority of the cases brought before Courts-Martial, afford, it is believed, a basis for all pleadings under the Articles of War. It is to be borne in mind, that the offense charged, must be described in accurate language, "sufficiently clear to inform the accused of the military offense for which he is to be tried, and to enable him to prepare his defense."

(*Attorney General Wirt, 1 opinions, 286.*)

BY COMMAND OF BRIGADIER GENERAL TERRY:

GEO. D. RUGGLES,

Assistant Adjutant General.

OFFICIAL:

Thomas H. Carr

Major and Judge Advocate, U. S. Army.

Gaylord

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